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5 FILED IN THE  
6 U.S. DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
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10 UNITED STATES DISTRICT COURT Aug 31, 2020  
11 EASTERN DISTRICT OF WASHINGTON SEAN F. McAVOY, CLERK  
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JAMES A.,

No. 2:19-CV-0282-JTR

11 Plaintiff,

12  
13 ORDER GRANTING DEFENDANT'S  
14 MOTION FOR SUMMARY  
15 JUDGMENT  
16  
17  
18

ANDREW M. SAUL,  
15 COMMISSIONER OF SOCIAL  
16 SECURITY,

Defendant.

19 BEFORE THE COURT are cross-motions for summary judgment. ECF  
20 No. 15, 17. Attorney Chad L. Hatfield represents James A. (Plaintiff); Special  
21 Assistant United States Attorney Shata Ling Stucky represents the Commissioner  
22 of Social Security (Defendant). The parties have consented to proceed before a  
23 magistrate judge. ECF No. 7. After reviewing the administrative record and the  
24 briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary  
25 Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

26 **JURISDICTION**

27 Plaintiff filed an application for Supplemental Security Income in March  
28 2014, alleging disability since June 15, 2011, due to chronic neck and shoulder

1 pain; loss of feeling in both arms; nerve damage in both hands; headaches; arthritis  
2 in shoulder and spine; and torn rotator cuff of left shoulder. Tr. 159, 188. The  
3 application was denied initially and upon reconsideration. Administrative Law  
4 Judge (ALJ) Caroline Siderius held a hearing on May 9, 2016, Tr. 33-69, and  
5 issued an unfavorable decision on June 7, 2016, Tr. 20-28. The Appeals Council  
6 denied Plaintiff's request for review on June 17, 2019. Tr. 1-6. The ALJ's June  
7 2016 decision thus became the final decision of the Commissioner, which is  
8 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
9 action for judicial review on August 15, 2019. ECF No. 1.

#### 10 **STATEMENT OF FACTS**

11 Plaintiff was born on October 29, 1964, and was 49 years old on the  
12 disability application date, March 14, 2014. Tr. 159. He completed high school in  
13 1982. Tr. 54, 189. Plaintiff testified at the administrative hearing on May 9, 2016,  
14 that he last worked for a window manufacturing company in 2011. Tr. 41-42.  
15 Plaintiff's disability report indicates he worked for that window manufacturing  
16 company starting in 2008 but stopped working altogether in June 2011 because of  
17 his conditions. Tr. 188-190.

18 Plaintiff testified at the administrative hearing that he has had trouble with  
19 his shoulders for about 10 years. Tr. 41. He indicated 90 percent of the time he  
20 wears a sling for his left arm, which was recommended by his treating physician  
21 Dr. Gaddy, and puts a pillow under his left arm while sitting on a couch to support  
22 the weight of the arm. Tr. 43, 62. He stated he tries to not use his left arm at all.  
23 Tr. 49.

24 Plaintiff testified he is only able to stand and/or walk a couple of hours at  
25 one time before needing to sit. Tr. 44, 45. He stated that putting on his socks or  
26 shoes can aggravate the left shoulder (making it pop or dislocate), so he has  
27 modified the way he dresses by using only his right arm. Tr. 46-47. He indicated  
28 he is able to dress, eat and drink and do some household tasks, but he no longer

1 mows the lawn, goes fishing, lifts heavy things, or works on his cars. Tr. 47, 50, 67.  
2 He is able to use a computer, but he tries to only use his right arm and his right  
3 hand will go to sleep and cramp up after about 10 minutes of use. Tr. 48, 49. He  
4 is also able to drive, but he switches hands, back and forth, while driving. Tr. 52.

5 Plaintiff testified he has been prescribed hydrocodone, ibuprofen and a  
6 muscle relaxer, and he indicated the medications did help. Tr. 51. He stated that  
7 using a heating pad and a hot tub also helped his shoulder pain. Tr. 45.

#### 8 **STANDARD OF REVIEW**

9 The ALJ is responsible for determining credibility, resolving conflicts in  
10 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
11 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
12 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
13 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
14 only if it is not supported by substantial evidence or if it is based on legal error.  
15 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
16 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
17 1098. Put another way, substantial evidence is such relevant evidence as a  
18 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
19 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
20 rational interpretation, the Court may not substitute its judgment for that of the  
21 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
22 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
23 administrative findings, or if conflicting evidence supports a finding of either  
24 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
25 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
26 supported by substantial evidence will be set aside if the proper legal standards  
27 were not applied in weighing the evidence and making the decision. *Brawner v.*  
28 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

## 1                   **SEQUENTIAL EVALUATION PROCESS**

2                   The Commissioner has established a five-step sequential evaluation process  
3 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
4 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of  
5 proof rests upon the claimant to establish a *prima facie* case of entitlement to  
6 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a  
7 claimant establishes that a physical or mental impairment prevents the claimant  
8 from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant  
9 cannot perform past relevant work, the ALJ proceeds to step five, and the burden  
10 shifts to the Commissioner to show (1) the claimant can make an adjustment to  
11 other work; and (2) the claimant can perform specific jobs that exist in the national  
12 economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th  
13 Cir. 2004). If a claimant cannot make an adjustment to other work in the national  
14 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

## 15                   **ADMINISTRATIVE DECISION**

16                   On June 7, 2016, the ALJ issued a decision finding Plaintiff was not disabled  
17 as defined in the Social Security Act.

18                   At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
19 activity since March 14, 2014, the disability application date. Tr. 22.

20                   At step two, the ALJ determined Plaintiff had the following severe  
21 impairments: osteoarthritis of the bilateral shoulders and asthma. Tr. 22.

22                   At step three, the ALJ found Plaintiff did not have an impairment or  
23 combination of impairments that meets or medically equals the severity of one of  
24 the listed impairments. Tr. 22-23.

25                   The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
26 Plaintiff could perform light exertion level work with the following limitations: he  
27 could lift or carry up to 20 pounds occasionally and 10 pounds frequently and had  
28 no limitations in standing, walking or sitting; he could occasionally stoop, crouch,

1 and kneel, but could never climb ladders, ropes or scaffolds; he could not reach  
2 overhead and could not push or pull with the left dominant arm; he could  
3 occasionally reach in other directions with the left dominant arm; he could  
4 occasionally handle and frequently finger and feel with the left hand; he could  
5 occasionally reach overhead with the right arm, but frequently reach in all other  
6 directions; he could frequently handle, finger and feel with the right hand; he could  
7 have no exposure to unprotected heights or the operation of vibrating machinery;  
8 and he must avoid uneven surfaces and concentrated exposure to odors, dusts,  
9 gases and fumes. Tr. 23.

10 At step four, the ALJ found Plaintiff was not able to perform his past  
11 relevant work. Tr. 26.

12 At step five, the ALJ determined that, based on the testimony of the  
13 vocational expert, and considering Plaintiff's age, education, work experience, and  
14 RFC, Plaintiff was capable of making a successful adjustment to other work that  
15 exists in significant numbers in the national economy, including the jobs of  
16 sandwich board carrier, counter clerk and usher. Tr. 27-28.

17 The ALJ thus concluded Plaintiff was not under a disability within the  
18 meaning of the Social Security Act at any time from March 14, 2014, the disability  
19 application date, through the date of the ALJ's decision, June 7, 2016. Tr. 28.

## 20 ISSUES

21 The question presented is whether substantial evidence supports the ALJ's  
22 decision denying benefits and, if so, whether that decision is based on proper legal  
23 standards.

24 Plaintiff raises the following issues of review: (1) Did the ALJ err in  
25 improperly rejecting the opinions of Plaintiff's medical providers; (2) Did the ALJ  
26 err in failing to find Plaintiff's impairments meet or equal a Listing at step three;  
27 (3) Did the ALJ err in rejecting Plaintiff's subjective complaints; and (4) Did the  
28 ALJ err in failing to conduct an adequate analysis at step five? ECF No. 15 at 6.

## DISCUSSION

### A. Medical Opinion Evidence

Plaintiff contends the ALJ erred by failing to accord greater weight to the medical opinions of examining physician W. Rex Stahly, M.D., and reviewing physician J. Dalton, M.D. ECF No. 15 at 9-11.

In a disability proceeding, the courts distinguish among the opinions of three types of acceptable medical sources: treating physicians, physicians who examine but do not treat the claimant (examining physicians) and those who neither examine nor treat the claimant (nonexamining physicians). *Lester*, 81 F.3d at 830. A treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion is given more weight than that of a nonexamining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830. In weighing the medical opinion evidence of record, the ALJ must make findings setting forth specific, legitimate reasons for doing so that are based on substantial evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

Dr. Stahly completed a Physical Functional Evaluation form report on February 20, 2015. Tr. 241-245. Dr. Stahly wrote that Plaintiff had severe left shoulder spasm and loss of motion and mild right shoulder rotator cuff syndrome. Tr. 243. He opined the impairments caused Plaintiff to be "severely limited" or unable to meet the demands of sedentary work. Tr. 242. On March 13, 2015, Dr. Dalton reviewed the record, which included only the report of Dr. Stahly and a 2007 report of Dr. Gaddy, Tr. 246, and assessed "severe limitation" in gross or fine motor skill restrictions based on internal derangement of the shoulder and degenerative joint disease, Tr. 247, 248. He wrote that Plaintiff's left shoulder was "frozen" and the right shoulder was sore but usable. Tr. 248. Dr. Dalton checked a box indicating Plaintiff was able to perform "less than sedentary" level work. Tr. 247.

1       The ALJ accorded no weight to the reports of Drs. Stahly and Dalton. Tr.  
2 26. The ALJ noted Dr. Stahly acknowledged he did not review any radiology  
3 imaging and did not indicate any other objective medical evidence in support of his  
4 assessed limitations and that Dr. Dalton based his opinion on Dr. Stahly's report.  
5 Tr. 26. The ALJ concluded the opinions of these medical professionals were  
6 unsupported by objective medical evidence and the clinical findings documented  
7 by other physicians of record. *Id.*

8       The Ninth Circuit has held that the Commissioner need not accept a  
9 physician's opinion that is brief, conclusory, and inadequately supported by  
10 clinical findings. *See Batson v. Commissioner of Social Security Administration*,  
11 359 F.3d 1190, 1195 (9th Cir. 2004); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th  
12 Cir. 2002) (“The ALJ need not accept the opinion of any physician, including a  
13 treating physician, if that opinion is brief, conclusory, and inadequately supported  
14 by clinical findings.”); *Holohan v. Massanari*, 246 F.3d 1195, 1202 n. 2 (9th Cir.  
15 2001) (stating that a physician's opinion may be “entitled to little if any weight”  
16 where the physician “presents no support for her or his opinion”); *Tonapetyan v.*  
17 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (“When confronted with conflicting  
18 medical opinions, an ALJ need not accept a treating physician's opinion that is  
19 conclusory and brief and unsupported by clinical findings.”); *Magallanes v.*  
20 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Crane v. Shalala*, 76 F.3d 251, 253 (9th  
21 Cir. 1996) (holding that an ALJ may reject check-off forms that do not contain an  
22 explanation of the bases for their conclusions).

23       As indicated by the ALJ, Dr. Stahly's report lists no laboratory, imaging,  
24 range of motion or other diagnostic test results that he reviewed, Tr. 243, yet he  
25 concluded Plaintiff would be severely limited and unable to meet the demands of  
26 even sedentary work for an unknown period of time, Tr. 242. Tr. 26. Although  
27 Dr. Stahly recorded a restricted range of motion in Plaintiff's shoulders, Tr. 245,  
28 these findings do not support the significant restrictions assessed by Drs. Stahly

1 and Dalton regarding Plaintiff's handling abilities, fine motor functioning and  
2 abilities to stand, walk and sit. Tr. 26, 243, 247. Reviewer Dalton provided no  
3 objective findings in support of his assessed limitations. The conclusory limitation  
4 findings of Drs. Stahly and Dalton are unsupported.

5 As determined by the ALJ, the reports of Drs. Stahly and Dalton, were  
6 additionally inconsistent with the objective medical evidence of record and the  
7 clinical findings documented by other physicians. *See* Tr. 229-231 (2006  
8 evaluation with treating physician James Gaddy, M.D., revealed limited range of  
9 motion in Plaintiff's shoulders but a restriction to light exertion level work); 233  
10 (Dr. Gaddy noted full range of motion in June 2014); 235-237 (Plaintiff reported to  
11 Robert J. Rose, M.D., in June 2014 that he was able to walk, sit, and stand without  
12 difficulty; Dr. Rose found Plaintiff's motor strength was 4-5/5 in all elements  
13 affecting the shoulders, elbows, wrists, hips, knees and ankles, overall dexterity  
14 was adequate, and ability to handle, grasp and manipulate did not appear to be  
15 affected); 240 (June 2014 imaging reveals only mild osteoarthritis of the bilateral  
16 shoulders and acromioclavicular joints); 85-88 (state agency reviewing physician  
17 Gordon Hale, M.D., opined in October 2014 that Plaintiff was capable of  
18 performing light exertion level work with some postural, reaching and  
19 environmental limitations); 267 (July 2015 examination revealed 5/5 strength in  
20 upper and lower extremities); 257 & 280 (examination with Steven R. Goodman,  
21 M.D., in April 2016 revealed restricted range of motion in the shoulders but 5/5  
22 strength in upper extremities without focal deficit or hand atrophy; Dr. Goodman  
23 noted Plaintiff was able to transfer on and off the exam table and remove his shoes  
24 and clothing with no pain behaviors); and 37-40 (May 2016 testimony of medical  
25 expert Robert C. Thompson, M.D., revealed a reduced range of motion in both  
26 shoulders but no evidence of muscle atrophy in either hand, intact fine  
27 manipulation and dexterity and no loss of fine or gross movement in the upper  
28 //

1 extremities). The opinions of Drs. Stahly and Dalton are not supported by the  
2 weight of the record evidence.

3 The Court finds the reports of Drs. Stahly and Dalton are unsupported and  
4 inconsistent with the weight of the record evidence. The ALJ thus provided  
5 specific and legitimate reasons, supported by substantial evidence, for assigning no  
6 weight to the opinions of Drs. Stahly and Dalton.

7 **B. Step Three**

8 Plaintiff next contends the ALJ erred at step three of the sequential  
9 evaluation process by failing to properly assess whether Plaintiff was disabled  
10 under Listing 1.02B. ECF No. 15 at 11-12.

11 The Listings describe, for each of the major body systems, impairments that  
12 are severe enough to prevent an individual from doing any gainful activity,  
13 regardless of age, education, or work experience. 20 C.F.R. § 416.925(a). Each  
14 Listing specifies the objective medical and other findings needed to satisfy the  
15 criteria of that Listing. A diagnosis alone is insufficient; a medically-determinable  
16 impairment must also satisfy all of the criteria of the Listing, 20 C.F.R. §  
17 416.925(d), and Plaintiff bears the burden of establishing that an impairment  
18 satisfies the requirements of a Listings impairment, *Tackett*, 180 F.3d at 1098-  
19 1099; 20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d). A generalized assertion of  
20 functional problems is not enough to establish disability at step three of the  
21 sequential evaluation process. *Tackett*, 180 F.3d at 1100.

22 Plaintiff's opening brief asserts he is disabled pursuant to Listing 1.02B,  
23 ECF No. 15 at 12, but Plaintiff fails to address the specific requirements of Listing  
24 1.02B or how the evidence of record satisfies the criteria of this Listing. Courts  
25 will not consider matters on appeal that are not specifically and distinctly argued in  
26 an opening brief. *See Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1161  
27 n.2 (9th Cir. 2008). The Ninth Circuit has repeatedly admonished that the Court  
28 should not consider any claims that were not actually argued in an appellant's

1 opening brief. *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir.  
 2 1994). Rather, the Court should “review only issues which are argued specifically  
 3 and distinctly in a party’s opening brief.” *Id.*; *Indep. Towers of Washington v.*  
 4 *Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

5 In any event, the Court finds the ALJ committed no error at step three in this  
 6 case.

7 Listing 1.02B explains when a claimant with a major dysfunction of an  
 8 upper extremity joint has a condition so serious that it is *per se* disabling. 20  
 9 C.F.R. Part 404, Subpt. P, App. 1, § 1.02B (major dysfunction of an upper  
 10 extremity joint resulting in inability to perform fine and gross movements  
 11 effectively). Examples of inability to perform fine and gross movements  
 12 effectively include the inability to prepare a simple meal and feed oneself, the  
 13 inability to take care of personal hygiene, the inability to sort and handle papers or  
 14 files, and the inability to place files in a file cabinet at or above waist level. 20  
 15 C.F.R. Par 404, Subpt. P, App. 1, § 1.00B2c. The record contains no evidence of  
 16 Plaintiff being limited to such an extent.<sup>1</sup> Plaintiff’s step three argument is without  
 17 merit.

18 **C. Plaintiff’s Symptom Testimony**

19 Plaintiff next contends the ALJ erred by rejecting his subjective complaints.  
 20 ECF No. 15 at 12-17.

21 It is the province of the ALJ to make credibility determinations. *Andrews*,  
 22 53 F.3d at 1039. However, the ALJ’s findings must be supported by specific  
 23 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent

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24  
 25 <sup>1</sup>While Plaintiff asserts the severe limitations assessed by Dr. Dalton support  
 26 a finding that he is disabled pursuant to Listing 1.02B, ECF No. 15 at 12, Dr.  
 27 Dalton’s opinion, as discussed above, was properly rejected by the ALJ in this  
 28 case. *See supra*.

1 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's  
2 testimony must be "specific, clear and convincing." *Lester v. Chater*, 81 F.3d 821,  
3 834 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must  
4 identify what testimony is not credible and what evidence undermines the  
5 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,  
6 918 (9th Cir. 1993).

7 In this case, the ALJ found Plaintiff's medically determinable impairments  
8 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
9 statements concerning the intensity, persistence and limiting effects of those  
10 symptoms were not entirely consistent with the medical and other evidence of  
11 record. Tr. 24.

12 The ALJ first determined the objective medical evidence did not support a  
13 finding that his RFC was less than assessed in the decision. Tr. 24.

14 A lack of supporting objective medical evidence is a factor which may be  
15 considered in evaluating an individual's credibility, provided it is not the sole  
16 factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991) (Once a claimant  
17 produces objective medical evidence of an underlying impairment, an adjudicator  
18 may not reject the claimant's subjective complaints based solely on a lack of  
19 objective medical evidence to fully corroborate the alleged severity of pain.);  
20 *Robbins v. Soc. Sec. Admin.*, 466 F3d 880, 883 (9th Cir. 2006) (An ALJ may not  
21 make a negative credibility finding "solely because" the claimant's symptom  
22 testimony "is not substantiated affirmatively by objective medical evidence.").

23 The ALJ noted June 2014 x-rays revealed mild osteoarthritis of the bilateral  
24 shoulders and acromioclavicular joints. Tr. 24, 240. The ALJ further discussed  
25 the medical opinion evidence, beginning with Plaintiff's long-time primary care  
26 physician, Dr. Gaddy, who found Plaintiff's shoulder issues limited him to light  
27 exertion level work in 2006, Tr. 229-231, but noted in June 2014 that Plaintiff had  
28 a full range of motion in his shoulders, Tr. 233. Tr. 24. In June 2014, Plaintiff

1 reported to examining physician Rose that he was able to walk, sit, and stand  
2 without difficulty. Tr. 25, 235. Dr. Rose determined Plaintiff's motor strength  
3 was 4-5/5 in all elements affecting the shoulders, elbows, wrists, hips, knees and  
4 ankles, overall dexterity was adequate, and ability to handle, grasp and manipulate  
5 did not appear to be affected. Tr. 25, 237. Dr. Hale, a state agency reviewing  
6 physician, opined in October 2014 that Plaintiff was capable of performing light  
7 exertion level work with some postural, reaching and environmental limitations.  
8 Tr. 25-26, 85-88. In April 2016, examiner Goodman found that Plaintiff had 5/5  
9 strength in his upper extremities without focal deficit or hand atrophy. Tr. 25, 257.  
10 Dr. Goodman noted Plaintiff was able to transfer on and off the exam table and  
11 remove his shoes and clothing with no pain behaviors. Tr. 25, 257. Finally, in  
12 May 2016, medical expert Thompson opined that Plaintiff was capable of light  
13 exertion level work with some restrictions. Tr. 25, 37-40.

14 Based on the foregoing, the credible medical evidence of record<sup>2</sup> does not  
15 align with Plaintiff's allegations of completely disabling symptoms in this case.  
16 Consequently, the ALJ's finding that the objective medical evidence of record is  
17 inconsistent with Plaintiff's allegations is supported by substantial evidence.

18 The ALJ next indicated Plaintiff had largely undergone only conservative  
19 treatment measures. Tr. 24.

20 Evidence of "conservative treatment" is sufficient to discount a claimant's  
21 testimony regarding severity of an impairment. *Parra v. Astrue*, 481 F.3d 742, 751  
22 (9th Cir. 2007) (being treated with over-the-counter pain medication is an example  
23 of "evidence of 'conservative treatment'" that is "sufficient to discount a  
24 claimant's testimony regarding severity of an impairment."); *Johnson v. Shalala*,  
25

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26 <sup>2</sup>As discussed in Section A, above, the opinions of Drs. Stahly and Dalton  
27 were properly rejected by the ALJ as unsupported and inconsistent with the weight  
28 of the record evidence. *See supra*.

1 60 F.3d 1428, 1434 (9th Cir. 1995) (finding conservative treatment suggests a  
2 lower level of both pain and functional limitation).

3 As indicated by the ALJ, Tr. 24, Plaintiff has undergone very sporadic  
4 treatment with primarily conservative measures such as over-the-counter pain  
5 medication and prescribed anti-inflammatory medications. Tr. 257-258 (physical  
6 therapy referral), 262-263 (note of over-the-counter pain medication usage,  
7 prescription for pain medications and referral to physical therapy), 281 (referral to  
8 physical therapy). As noted by the Commissioner, ECF No. 17 at 12, Plaintiff did  
9 not dispute the accuracy of the ALJ's statement regarding Plaintiff's conservative  
10 treatment, he merely emphasized he did not have health insurance during much of  
11 the relevant time period, *see* ECF No. 15 at 14-15. Nevertheless, when Plaintiff  
12 was able to meet with doctors regarding his symptoms, he was in fact only treated  
13 with conservative measures, including medication management and physical  
14 therapy.

15 Plaintiff's history of conservative treatment was a valid reason to discount  
16 his testimony regarding the severity of his impairments.

17 The ALJ additionally noted inconsistencies within the record that detracted  
18 from Plaintiff's reliability regarding his impairments. Tr. 26.

19 In determining credibility, an ALJ may engage in ordinary techniques of  
20 credibility evaluation, such as considering claimant's reputation for truthfulness  
21 and inconsistencies in claimant's testimony. *Burch v. Barnhart*, 400 F.3d 676, 680  
22 (9th Cir. 2005); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). When  
23 a claimant fails to be a reliable historian, "this lack of candor carries over" to other  
24 portions of his testimony. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

25 Contrary to Plaintiff's testimony at the administrative hearing that he is only  
26 able to stand and/or walk a couple of hours at one time before needing to sit, Tr.  
27 44, 45, and that putting on his socks or shoes aggravates his left shoulder (making  
28 it pop or dislocate), Tr. 46-47, Plaintiff reported to Dr. Rose in June 2014 that he

1 was able to walk, sit, and stand without difficulty, Tr. 235, and Dr. Goodman noted  
 2 in April 2016 that Plaintiff was able to transfer on and off the exam table and  
 3 remove his shoes and clothing with no pain behaviors, Tr. 257. Tr. 26. The ALJ  
 4 properly found the foregoing inconsistencies detracted from Plaintiff's reliability  
 5 regarding his impairments.

6 The ALJ also concluded Plaintiff's activities of daily living were  
 7 inconsistent with any greater limitations than those assessed by the ALJ. Tr. 24,  
 8 26. It is well-established that the nature of daily activities may be considered when  
 9 evaluating credibility. *Fair*, 885 F.2d at 603. The ALJ noted the record reflected  
 10 Plaintiff was able to perform minimal cooking, cleaning and shopping, Tr. 235,  
 11 and Plaintiff testified he was able to dress, do some household tasks (clean dishes  
 12 and vacuum), and drive a car, Tr. 47, 52, 67. Tr. 26. It appears it was proper for  
 13 the ALJ to note Plaintiff's activities of daily living as contrary to his subjective  
 14 complaints. However, even if it were improper for the ALJ to find Plaintiff's level  
 15 of activity inconsistent with his subjective complaints, *see Fair*, 885 F.2d at 603  
 16 (one does not need to be "utterly incapacitated" to be disabled); *Vertigan v. Halter*,  
 17 260 F.3d 1044, 1050 (9th Cir. 2001) ("[T]he mere fact that a plaintiff has carried  
 18 on certain daily activities, such as grocery shopping, driving a car, or limited  
 19 walking for exercise, does not in any way detract from her credibility as to her  
 20 overall disability."), the Court would find this error harmless given the ALJ's other  
 21 supported reasons for finding Plaintiff less than fully credible. *See Carmickle v.*  
 22 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1160, 1163 (9th Cir. 2008) (upholding  
 23 adverse credibility finding where ALJ provided four reasons to discredit claimant,  
 24 two of which were invalid); *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190,  
 25 1197 (9th Cir. 2004) (affirming credibility finding where one of several reasons  
 26 was unsupported by the record).

27 The ALJ is responsible for reviewing the evidence and resolving conflicts or  
 28 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.

1 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in  
2 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in  
3 determining whether the ALJ's decision is supported by substantial evidence and  
4 may not substitute its own judgment for that of the ALJ even if it might justifiably  
5 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After  
6 reviewing the record, the Court finds the ALJ provided clear and convincing  
7 reasons, supported by the record, for discounting Plaintiff's symptom allegations in  
8 this case. The ALJ did not err in this regard.

9 **D. Step Five**

10 Plaintiff contends the ALJ erred at step five of the sequential evaluation  
11 process by relying on the vocational expert's testimony in response to an  
12 incomplete hypothetical; a hypothetical that did not reflect all of Plaintiff's  
13 limitations. ECF No. 15 at 17-18.

14 As determined above, the ALJ did not err by rejecting the reports of Drs.  
15 Stahly and Dalton and by finding Plaintiff's symptom allegations were not entirely  
16 credible. As such, the ALJ's ultimate RFC determination is supported by  
17 substantial evidence and free of error.

18 The ALJ's RFC determination held that Plaintiff could perform light  
19 exertion level work with certain postural, manipulative and environmental  
20 limitations. Tr. 23. At the administrative hearing held on May 9, 2016, the  
21 vocational expert testified that with the restrictions assessed by the ALJ, Plaintiff  
22 retained the capacity to perform a significant number of jobs existing in the  
23 national economy, including the positions of sandwich board carrier, counter clerk,  
24 and usher. Tr. 27, 55-57. Since the vocational expert's testimony was based on a  
25 proper RFC determination by the ALJ, the ALJ did not err at step five of the  
26 sequential evaluation process in this case.

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28       ///

## CONCLUSION

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision should be affirmed. Therefore, **IT IS HEREBY ORDERED:**

1. Defendant's Motion for Summary Judgment, ECF No. 17, is

## GRANTED.

2. Plaintiff's Motion for Summary Judgment, ECF No. 15, is DENIED.

**IT IS SO ORDERED.** The District Court Executive is directed to file this

Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED August 31, 2020.



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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE